Supreme Court, U.S.
FILED

971677 APR 10 1998

OFFICE OF THE CLERK

Docket Number: _____

SUPREME COURT OF THE UNITED STATES

October 1997 Term

DAN RODNEY JOOS,
Petitioner,

vs.

PIPER C. JOOS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO
THE UTAH SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Dan Rodney Joos, *Pro Se Petitioner*
c/o Dr. Gene R. Fuller
2446 East Sabal
Salt Lake City, Utah 84121
Telephone (801) 944-5870

58pp

Question presented for review

Do State Courts violate the Fourteenth Amendment to the United States Constitution when they deny us the opportunity to preserve our marriage?

ALL PARTIES

Dan Rodney Joos	Petitioner
Piper C. Joos	Respondent
Anthony Dan Joos	Son to this marriage
Aaron Kent Joos	Son to this marriage
Alexander Brent Joos	Son to this marriage

TABLE OF CONTENTS

PAGE

Citation of Orders of the Courts Below 1
Statement of Jurisdiction 1
Constitutional Provisions 1
Statutes 2-4
Statement of the Case 4-9
Argument 9-18

CONTENTS OF APPENDIX

DATE	COURT	CONTENTS	PAGE
1/14/98	Utah Supreme Court	Denies Petition for Extraordinary Relief & Hearing	A-1
8/6/97	Utah Court of Appeals	Motion for Reconsid-eration denied	A-2

DATE	COURT	CONTENTS	PAGE
6/24/97	Utah Court of Appeals	Denies Petition for Extraordinary Relief	A-3
9/9/96	Utah Third District Court	Denies Marriage Preservation Procedures (***Record*** **pages 226-227)**	A-4
5/24/96	Utah Third District Court	Denies Marriage Preservation Procedures (***Record*** **pages 131-132)**	A-5
1/2/98	Utah Supreme Court	Request for Hearing	A-6
12/12/97	Utah Supreme Court	Petition for Extraordinary writ	A-9
7/3/97	Utah Court of Appeals	Request for Reconsideration	A-17
5/21/97	Utah Court of Appeals	Petition for Extraordinary Relief	A-20
5/13/96	Utah Third District Court	Appeal for Hearing, Counseling,Conciliation (***Record*** **pages 124-126)**	A-27
5/1/96	Utah Third District Court	Response, Public Policy, Mandatory Family Counseling (***Record*** **pages 107-109)**	A-29
4/17/96	Utah Third District Court	Petition for Conciliation *and* Counseling (***Record*** **pages 101-103)**	A-32

TABLE OF AUTHORITIES

CONSTITUTION OF THE UNITED STATES **PAGE**

Ninth Amendment 7,8,9,A-14,A-16
Fourteenth Amendment 1,7,8,9,12,16, 18, A-13,A-14,A-16

STATUTES **PAGE**

Utah Code 30-3-5(1) 15,A-19
Utah Code 30-3-11.1 ..... 2,5, A-10,A-22,A-29
Utah Code 30-3-12 ..... 2,5,13,A-10,A-20,A-23,A-26,A-30
Utah Code 30-3-16.1 ..... 2,A-21,A-32
Utah Code 30-3-16.2 ..... 3,A-21,A-27,A-32
Utah Code 30-3-17 ..... 4, A-21,A-30,A-32

CASES **PAGE**

Allentown Mack Sales & Service, Inc. v. N.L.R.B.
118 S.Ct. 818 (1998) 17
Anonymous Wife v. Anonymous Husband
739 P.2d 791 (Ariz. App. 1986) 13
Brogan v. U.S. 118 S.Ct. 805 (1998) 16
Cleveland Bd. Of Ed. V. Loudermill 470 US 532,
105 S.Ct. 1487, 84 L.Ed2d 494 (1985) 16,17
Eisenstadt v. Baird 405 US 438. 31 L.Ed2d 349,
92 S.Ct. 1029 (1972) 4
Griswold v. Connecticut 381 US 479, 85 S.Ct.
1678, 14 L.Ed2d 510 (1965) 8,A-14
In re J.P., Utah, 648 P.2d 1364 ..... 8,A-11,A-13 to A-16
Lexecon v. Milberg Weiss Bershad Hynes & Lerach
118 S.Ct. 956 (1998) 13
Meyer v. Nebraska 262 US 390, 43 S.Ct. 625,
67 L.Ed 1042 (1923) 8,A-13
New Jersey v. T.L.O. 105 S.Ct. 733 (1985) 18
Newsweek, Inc. v. Florida Dept. of Revenue
118 S.Ct. 904 (1998) 18

Regions Hospital v. Shalala 118 S.Ct.909 (1998) 13
Stanley v. Illinois 405 US 645, 92 S.Ct. 1208,
31 L.Ed2d 551 (1972) 9, A-16
Washington v. Glucksberg 117 S.Ct. 2258 (1997) 12
Willey v. Willey 951 P.2d 226 (Utah 1997) 10,11

OTHER **PAGE**

Utah Law Review, Vol. 1970, April pp. 191-220 5
(Record pages 210-225)
Married People, Staying Together in the age of
Divorce, Bantam Books,.
Francine Klagsbrun, Author 14
Marriage published 1978 by Deseret Book Company,
Spencer W. Kimball, Author 14

Date	Court	Order	Page (Appendix)
Jan. 14, 1998	Utah Supreme Court	Denies Petition for Extraordinary Relief And Hearing	A-1
Aug. 6, 1997	Utah Court of Appeals	Denies Motion for Reconsideration	A-2
June 24, 1997	Utah Court of Appeals	Denies Petition for Extraordinary Relief	A-3
Sept. 9, 1996	Utah Third District Court	Denies Hearing and Marriage Preservation Procedures	A-4
May 24, 1996	Utah Third District Court	Denies Marriage Preservation Procedures	A-5

JURISDICTION

On January 14, 1998, the Utah Supreme Court issued an order denying both marriage preservation procedures and a motion for a hearing to present the important reasons why such procedures should be granted. 28 USCS § 1257 confers jurisdiction on the Supreme Court of the United States.

CONSTITUTIONAL PROVISIONS

United States Constitution

Amendment XIV Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES: UTAH CODE

30-3-11.1. Family Court Act - Purpose.

"It is the public policy of the State of Utah to strengthen the family life foundation of our society and reduce the social and economic costs to the state resulting from broken homes and to take reasonable measures to preserve marriages, particularly where minor children are involved. The purposes of this act are to protect the rights of children and to promote the public welfare by preserving and protecting family life and the institution of matrimony by providing the courts with further assistance for family counseling, the reconciliation of spouses and the amicable settlement of domestic and family controversies."

30-3-12. Courts to exercise family counseling powers.

"Each district court of the respective judicial districts, while sitting in matters of divorce, annulment, separate maintenance, child custody, alimony and support in connection therewith, child custody in habeas corpus proceedings, and adoptions, shall exercise the family counseling powers conferred by this act."

30-3-16.1. Jurisdiction of family court division - Powers.

"Whenever any controversy exists between

spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is a child of the spouses or either of them under the age of 17 years whose welfare might be affected, the family court division of the district court shall have jurisdiction over the controversy , over the parties and over all persons having any relation to the controversy and may compel attendance before the court or a domestic relations counselor of the parties or other persons related to the controversy. The court may make orders in divorce or conciliation proceeding as it deems necessary for the protection of the family interests."

30-3-16.2. Petition for conciliation.

"Prior to the filing of any action for divorce, annulment, or separate maintenance, either spouse or both spouses may file a petition for conciliation in the family court division invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or an amicable settlement of the controversy between them so as to avoid litigation over the issues involved."

30-3-17. Power and jurisdiction of judge.

"The judge of a district court may counsel either spouse of both and may in his discretion require one or both of them to appear before him and, in those counties where a domestic relations counselor has been appointed pursuant to this act, require them to file a petition for conciliation and to appear before such counselor, or may recommend the aid of a physician, psychiatrist, psychologist, social service worker or other specialists or scientific expert, or the pastor, bishop or presiding officer of

> any religious denomination to which the parties may belong. The power and jurisdiction granted by this act shall be in addition to that presently exercised by the district courts and shall not be in limitation thereof."

STATEMENT OF THE CASE.

The State of Utah has established clear public policy and procedures to preserve marriages and families. It has enacted laws to allow counseling and reconciliation with a bright line separating proceedings that save families from those that dissolve them. The state courts pretend that no such line exists for this fundamental constitutional right of family integrity and have denied every attempt to preserve our family.

In Utah, single people are allowed to live and have families just like married people and then split up and make all the decisions to divide the money, property and children without ever seeing a courthouse or an attorney. They are completely free of any government control in their relationship, even though they are in *exactly* the same situation as ourselves and in spite of the fact that the U. S. Supreme Court says the Fourteenth Amendment demands that married people and single people must be treated alike (*Eisenstadt v. Baird, 405 US 438, 31 L.Ed2d 349, 92 S.Ct. 1029).*

Piper and I have been forced to go to court by the government in control of our marriage relationship. Neither of us broke any laws and we went to the courthouse in obedience to the law. At first blush it would appear that these laws are unconstitutional on their face to burden us beyond the zero requirements of unmarried people who live together, but that is not the problem. The real mockery and travesty is our treatment once we arrive at the Courthouse.

Suddenly the courts strip us of many fundamental constitutional rights to force us on the most direct, fastest course to divorce. They ignore public policy and clear, mandatory laws to save marriages and seize control of every aspect of our lives in attempt to

anger, frustrate and deprive us into turning against each other. Utah courts and many other state courts have perverted the law and robbed married couples of so many fundamental rights because mootness effectively has barred judicial oversight of the U. S. Supreme Court.

When my wife filed a complaint for divorce, I told the court that we could reconcile (R.47) [Record page 47] (Also R. 52). The court, instead, restrained me from my wife and property (R.73). Although the guardian ad litem told the court that the complaint was in error and we needed counseling (R.83), the court sent letters that said we were expected to settle for divorce or face "sanctions, attorney fees"(R.105) and a threat of deprivation of property, "income" and "assets" (R.115) if we did not proceed in divorce.

Rather than be bullied into stepping over the bright line and into divorce proceedings, I filed, in accordance to state law, a Petition for Conciliation and Counseling (R.101-103,107-109) (A-29, A-32) [Appendix pages 29,32]. The commissioner refused to grant these mandatory laws and clear public policy, calling them all invalid (R.104, 131-132) (A-5).

An appeal (R.124-126) (A-27) to the district judge was fruitless. Although the law requires that, "each district court.... ***shall*** exercise the family counseling powers conferred by this act" (Utah Code 30-3-12, emphasis added), and "public policy" (Utah Code 30-3-11.1) says the purpose of requiring us to go to court is to prevent "broken homes and to take reasonable measures to preserve marriages .... preserving and protecting family life and the institution of matrimony by providing .... family counseling, the reconciliation of spouses and the amicable settlement of domestic and family controversies", the judge refused to see or listen to us, (R.153-154) expressing the view (R.128) that she should be given more "financial resources" to do that part of her job.

A letter was then written to the judge (R.159-172) which included a Utah Law Review article (R.210-225) explaining in detail how this counseling by the judge, required by law, could be short and very successful in preserving marriages. This letter explained Piper's

unhappiness was caused by two recent miscarriages and a baby born dead (R.163,168) and the criticism and control of neighbors and relatives (R.159, 162, 168) who wanted her "to marry another person" and who "told my wife to get a divorce"(R.167). In particular **this letter told the judge** (R.166):

> ***"[Due process of law] No person shall be deprived of life, liberty or property without due process of law."***
>
> "Will the government take away my wife, my children, my home and property and even my income because a few jealous people told my wife to get a divorce? I think the sanctity of the marriage covenant deserves much more support than that." (Emphasis added).

The letter also quoted a recent Time magazine article that the inevitable result of divorce for our children would be:

> "A disputed landscape of anger and grief .... unable to fit in with peers .... adults crippled in their own attempts of love".

And quoted a recent U. S. News and World Report article:

> "Rich or poor, white or black, the children of divorce and those outside of marriage struggle through life at a measurable disadvantage."

The judge refused to read the letter and other information and three days later signed an order denying the marriage preservation procedures (R. 226,227) (A-4).

A petition for extraordinary relief (A-20) was filed in the Utah Court of Appeals reiterating these plain laws that the district courts are ignoring and quoting many expert authorities about the severe strain that a death of a child is to a marriage. The Court of Appeals signed an order "denied" (A-3). A "Request for Reconsideration" to

that court said (A-17 to A-19):

> "To deny our family the ' family counseling powers' mandated by the Legislature is to ***deny due process of law...***"
>
> "The judgment cannot survive the 'strict scrutiny standard' that must apply with the **denial of fundamental constitutional rights.**"
>
> "The first issue of my brief asks the court to provide the opportunity to try and save the marriage as provided by law. **To fail to do so is denial of due process and equal protection...."**
>
> **"Constitutional law allows the State the police powers to regulate marriage in the public interest, but only to the extent of that interest."**
>
> "The reason my wife and I came to the courthouse was because Utah is interested in preserving marriage, The State has no special interest in how we spend our money, divide our property or the custody of the children. **Those are fundamental rights in which the State has no compelling interest. After all, two single people can live together without marriage and have children and live lives like married people - and then split up and make all those decisions without the State stepping in. Constitutional law demands the State show compelling interest to classify and treat us any different. Utah law cannot deprive us of constitutional rights that are accorded to other persons."** *(*Emphasis added*)*

It was all to no avail - the Motion for Reconsideration was denied by the Utah Court of Appeals (A-2).

The *Utah Supreme Court* was given a "Petition for Extraordinary Writ" (A-9) that included the strongest possible arguments of this federal question of our constitutional rights under the Ninth and Fourteenth Amendments to preserve our marriage and

family, (*in re J.P. Utah, 648 P.2d 1364).* Among other citations the following was given to the Utah Supreme Court (*in re J.P.*, page 1372) (A-13):

> "In *Meyer v. Nebraska* 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923), **the Supreme Court included family relationships in the "liberty" of which a state cannot deprive any person without due process of law under the Fourteenth Amendment to the United States Constitution:**
>
> "While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual....to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men...."
>
> (A-14) "**The Ninth Amendment to the United States Constitution** states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.' *See generally Griswold v. Connecticut,* 381 U.S. 479, 486-99, 85 S.Ct. 1678, 1682-90, 14 L.Ed.2d 510 (1965)(Goldberg, J. concurring); L. Tribe, *American Constitutional Law, § 11-3 (1978).*
>
> (A-14)(Page 1373) **"The rights inherent in family relationships - husband-wife, parent-child, and sibling - are the most obvious examples of rights retained by the people. They are "natural," "intrinsic," or "prior" in the sense that our Constitutions presuppose them, as they presuppose the right to own and dispose of property.** Decisions of the United States Supreme

> Court have declared that "[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men."
>
> (A-16) (Page 1374) "In *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972), **the United States Supreme Court summarized** the legal effects of these conclusions that the rights embodied in family relationships are inherent, natural, and retained rights as follows: **"The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment."** (Emphasis added)

These powerful pronouncements of the U.S. Supreme Court were all ignored by the Utah Supreme Court and the petition to allow us the opportunity of preserving our marriage and family was denied (A-1). At no time, from start to finish, from the lowest court to the highest state court did Piper and I have a single chance to talk with a judge about "the integrity of our family" and about saving our marriage or even a simple hearing to explain the basis and circumstances for such a reasonable request. No matter that it is a fundamental constitutional right, no matter that it is mandatory state law and explicit public policy of Utah.

ARGUMENT

The larger, broad federal question of whether most states have invaded the right of privacy of couples who consider divorce in their relationship must wait for another day, because I remain faithful to my wife and on the side of the line of trying to save our marriage. If two businessmen decide to dissolve their relationship, they are not required to go to court to divide the assets or to get permission. If several college students buy a home and share expenses on the property, - upon graduation and ending their relationship, - they are not compelled to go to court to decide a fair distribution of what they

jointly own. Married couples can separate and move far apart and never see each other again. They remain free of unwanted government intrusion in their relationship and in dividing debts, alimony, property and custody of the children. Single people, who never married can choose to live together, have children, acquire joint property, and enjoy the rights of married people then repeatedly end and recommence their relationship without interference of the government. In all of society's relationships, a solitary class of people is compelled by the states to court: married couples who seek divorce. Apparently this class of people are no longer capable and are not allowed their constitutional rights to make decisions that everyone else makes.

Because the states have given the courts an absolute monopoly on this class of people (no one can get a divorce except through the state courts) the monopoly over time, acquires the inherent evils of all monopolies: the services and procedures degenerate to serving entirely the convenience and wants of the provider at the expense of the customer. This is especially true in this situation because not only are the courts the only entity to provide the "product" [of divorce], they have the power of law and summons to force you to buy this "product" against your will and "mootness" prevents the federal questions from ever escaping the state courts.

Take the example of the case just decided by the Utah Supreme Court while our case was pending before them. A childless couple has been seeking a divorce for seven years that has generated legal fees over $65,000.00 (*Willey v. Willey,* 951P.2d 226 [Utah 1997]). In spite of the "paucity of the estate", the Supreme Court's only solution is to keep them on this never ending merry-go-round and ordering a third trial over the same single issue. These people broke no laws, but are being burdened by the government, against their will, over an issue that their unmarried neighbors decide every day without spending a penny in legal fees. Only a monopoly can provide such poor service and get away with it without changing a single procedure to prevent its recurrence, and yet it still escapes review of the United States Supreme Court. Justice Durham of the Utah Supreme Court says (P.234, concurring in result):

> "Moreover, another remand will surely cost both parties more in attorney fees through **no fault of their own...**"
>
> "As the majority observes, '[t]he marital estate is insignificant in comparison to the legal fees incurred in its allocation.' However, *a very significant* portion *of the fees* accrued to this point appears to have resulted from the three appeals and two remands *necessitated by the trial court's failure* to make adequate findings of fact *and the Court of Appeals' unsuccessful efforts* to meliorate, *not by the parties' actions* or inadequate lawyering." (Emphasis added).

Even Justice Howe observes(P. 236, concurring and dissenting):

> "[The Courts] should not add to that distress by saddling the parties with unrealistic attorney fees that they must struggle to pay in future years and thus frustrate the new start they seek."

The opinion of the court doesn't care that this couple was only married for eight years and is starting them back at the trial court after seven years of litigation, without changing the root causes of such gross injustice. It says (P.234):

> "Although we are aware of the unfortunate length and expense of this litigation, it would be a *greater injustice to the judicial system* as a whole if we were to allow an appellate court to substitute its own judgment for that of the trial court...." (Emphasis added)

Only in a monopoly! The Salt Lake Tribune even lambastes the courts (Dec. 31, 1997, Section B1,3) saying:

> ".... Thanks to a Utah Supreme Court ruling that sends the case back to Third District Court for a

> third trial .... the case has bounced between the trial and appellate courts .... the five-judge *high court was divided on many issues* .... justices had differing opinions .... frustrated appellate judges .... the courts - not the Willeys and their attorneys - are to blame ...." (Emphasis added).

The United States Supreme Court should review the federal rights of law-abiding citizens, who, during divorce, are solely compelled to state courts, by reviewing the unjust treatment that Piper and I have also received. This petition is purposely limited to our constitutional right to keep our family together and excludes the court's proceedings that cross the line and dissolves families because we cannot argue both sides of the line at once (we cannot seek the rights dissolving families without rendering moot our rights to preserve the family).

If the United States Supreme Court does not review our case, the states will have a green light to continue to pretend that divorcing couples have no rights to their property, money, or children and continue to subject these people to heavy-handed procedures that amounts to little more than stealing money from the poor, struggling familes - that could be used for nice cars and vacations for their children - and giving that money to lawyers so the attorney's children can drive fancy cars and go on exotic vacations.

Simply put, this case petitions this court to get the state courts to cease impairing reconciliation and to tell the state courts that the Fourteenth Amendment's due process clause requires them to allow us the privilege and benefit of state laws for family preservation and conciliation. Last year the United States Supreme Court declared (*Washington v.. Glucksberg* , 117 S.Ct. 2258, 2267 (1997) [Citations omitted] that the "due process clause" protects "against government interference with certain fundamental rights" including "marital privacy", that (P.2268) the Fourteenth Amendment "forbids the government to infringe .... 'fundamental' liberty interests *at all* [your emphasis], no matter what process is provided, unless the infringement in narrowly tailored to serve a compelling state interest.

On page 2262 this court says:

> "We begin, as we do in all due-process cases, by examining our nation's history, legal traditions, and practices."

Historically divorce is an ecclesiastical function (*Anonymous Wife v. Anonymous Husband*, 739 P.2d 791 [Ariz. App. 1986] page 793). Government became involved in marriage during western expansion because churches were unavailable and stayed involved to uphold marriage in the interest of society and children.

In Utah, the legislature continues to pass laws to preserve and stabilize marriage, using the word "**shall**" (Utah Code 30-3-12). This year the U.S. Supreme Court said: (*Lexecon v. Milberg Weiss Bershad Hynes & Lerach*, 118 S.Ct. 956 (1998) page 962 (citations omitted):

> "The panel's instruction comes in terms of mandatory "shall", which normally creates an obligation impervious to judicial discretion."
>
> —"If we do our job of reading the statute whole, we have to give effect to this plain command, even if doing that will reverse the longstanding practice under the statute and the rule, ("Age is no antidote to clear inconsistency with a statute.")

The United States Supreme Court's intervention is our only hope to stop Utah State court's practice "simply to ignore" (P.962) and their similar "like use of blinders" (P.962). Similarly this year in *Regions Hosp.v. Shalala,*118 S,Ct. 909, 917 (1998) [Footnote 5]:

> ".... The Court has said [o]ver and over: in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."
>
> (Page 920) "We are not at liberty to construe

> any statute so as to deny effect to any part of its language. 'It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word."

Our family needs help. It is difficult to admit, but true. It is no different than, when we get sick, we admit the need of the help of a doctor. Plainly, Utah's Legislature passed laws that said we are entitled to this help through the oversight of the courts. I asked for this help. The state courts refused. I petition for writ of certiorari because it is the only option left to preserve our marriage and family. Some situations simply require outside help. For example in *Marriage, by Spencer W. Kimball, page 16:*

> "Well-meaning relatives have broken up many a home. Numerous divorces are attributable to the interference of parents who thought they were only protecting their loved children."

This problem, and its sheer magnitude and challenge to overcome is explained in detail in *Married People Staying Together in the Age of Divorce* by Francine Klagsbrun, page 173,174:

> "The worst kinds of family fracases come when parents are excessively controlling and children must fight to fend them off. Although, as I said, many parents want to hold on to their children longer than they should, *some parents simply do not want to let go at all. For such parents, a son's or a daughter's marriage is too threatening to the bond they have with that child. They don't want to be displaced, and they refuse to accept or recognize the fact that they have been.* In some distorted way they think that by asserting themselves in the marriage they will "show" their children - that they will not give in, that they count, that they can still call the shots.
>
> "*If such parents succeed, it is often at the*

> *expense of their child's marriage.* If they fail, it is because their child used extraordinary strength to stand up to them and to declare, either openly or through action: *My spouse now comes first in my life.* It is a declaration of independence nobody can make but the child, and it is one that takes a strong mind and firm commitment to one's freedom and one's marriage....
>
> Most of us believe that our parents want what is good for us, that they understand and support our need for independence, that they welcome our marriages and our spouses and families - and to varying degrees this is true of most parents. When parents fall short of these fantasies, it's easier to make excuses for them than to accept the idea that they may not care for us as much as we want them to, or as often is the case, they are placing their own egos ahead of concern for us. *It's easier to go along with parents, to give in when we can, than to confront them directly and risk hurting or angering them. And yet the declaration must be made, one way or another, if the marriage is to succeed."* (Emphasis added).

I made this declaration, when my grief stricken wife no longer could, by filing a **Petition for Conciliation and Counseling** in the Utah district Court (A-29,A-32) and in pursuing, on appeal to all the courts up to the United States Supreme Court, the district court's denial of that petition.

If we cannot turn to the courts for support of our marriage when faced with such daunting challenges, then the state courts have ceased to uphold family and marriage and public policy and have become, instead, their adversaries. In Utah law there is a single vague, discretionary provision that allows the court to help in the division of property during divorce [Utah Code 30-3-5(1)]. The courts have seized upon that reference to expend vast amounts of time and money to make themselves tyrants in telling us what to do with our property and threatening us if we don't comply. Repeatedly the

Utah district court scheduled conferences to settle our property using this discretionary law, all the while saying they have no resources to give five minutes of their time for *public policy* and *mandatory* laws meant to save marriages.

The Fourteenth Amendment says: "No state shall.... enforce any law which shall abridge the privileges .... of citizens of the United States". As I repeatedly spurned the court's attempts to make itself a party in dividing our property, seeking instead it's help in saving our marriage, the court simply seized our property and decided everything for themselves. Did Piper and I and others of our class involved in divorce proceedings cease to be "citizens of the United States?" Unmarried couples are allowed to make these property decisions without the courts making themselves a party!

The threshold question in an equal protection challenge is whether the legislation results in dissimilar treatment of similarly situated individuals. When a classification singles out a group of persons for disparate treatment from others who are similarly situated then the Fourteenth Amendment is being violated and will continue to be abused until the United States Supreme Court grants certiorari and comes in defense of the Constitution. Because a vast number of Americans, including unheard children, are affected by divorce proceedings in all the states, it is of utmost importance that this court review our case to establish the rights of people involved in these proceedings. The state courts need to know that the legislatures are right to provide laws meant to preserve and strengthen families and the right to seek "integrity" of the marriage and family is real and non-illusory.

> "Law's words, however technical they may sound, are not magic formulas; they must be read in light of their purposes, if we are to avoid essentially arbitrary applications and harmful results (*Brogan v. U.S.* 118 S.Ct. 805,817 (1998) [Justices Stevens with whom Justice Breyer joins, dissenting - footnote 1]):
>
> "We have described the "root requirement" of the due process clause as being "that an individual

> be given an opportunity for a hearing *before* he is deprived of any significant property interest." (Your emphasis) (*Cleveland Board of Education v. Loudermill* 470 U.S. 532,542, 105 S.Ct. 1487, 1493, 84 L.Ed2d 494 [1985]).

It is important that the Supreme Court of the United States pronounce, in this case, that the respondent has the right to be heard of how the marriage can be saved before being constrained to proceed in divorce for the sake of the children and society. This Supreme Court may need to aver to the states, and to Utah in particular, that married couples are still Americans with the same rights, even if involved in proceedings that could lead to divorce.

Marriage and families are the nation's foundation. Of tens of thousands of species on earth, the human child takes longer than all the rest to reach adulthood. Upholding the sanctity of marriage and the couple's rights secures stability for a child's growth and, in the end, safeguards society and our nation. If the courts are unwilling to do their part, then it really doesn't matter what they choose to do instead and law-abiding couples like us should no longer be required to attend court in regulation of our relationship.

What is clear in our case is that the Utah state courts are unwilling to follow the law, believing falsely that by depriving me of home, property, children, income, etc. that they can turn me against my wife. They have grossly misjudged, for I love my wife more than all these. We now need this court to grant certiorari to defend our basic rights; for millions of Americans find themselves in the same situation each year. When state courts succeed in making adversaries of spouses, they render moot their failure to uphold marriage and they create a cash cow for attorneys at the expense of the real needs of the children.

The United States Supreme Court said this year (*Allentown Mack Sales and Service, Inc. v. N.L.R.B.* 118 S.Ct. 818,827 [1998]) that: "It is hard to imagine a more violent breach" than to apply a rule different from the rule announced. Our family deserves the remedy

that this court provided this year in *Newsweek, Inc. v. Florida Dept. of Revenue 118 S.Ct. 904,905 (1998) (citations omitted):*

> "We emphasized a state 'has the flexibility to maintain an exclusively predeprivation remedial scheme, so long as that scheme is "clear and certain." **But a state may not "bait and switch" by holding out what plainly appears to be a "clear and certain"** post- deprivation **remedy and then declare**, only after the disputed taxes have been paid, **that no such remedy exists.**"
>
> "Newsweek **is entitled to a clear and certain remedy** .... we grant the petition for writ of certiorari, vacate the judgment, and remand for proceedings not inconsistent with this opinion."

Piper and I did not "shed our constitutional rights at the courthouse doors". We, and numberless others in our class, retain all the rights provided to all Americans under the Fourteenth Amendment. In concurring in part and dissenting in part, Justice Stevens warns with the words of Justice Brandeis (*New Jersey v. T.L.O.* 105 S.Ct. 733, 760 [1985]):

> "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy".

For the foregoing reasons, this petition for writ of certiorari should be granted. Dated the 9th day of April, 1998.

Respectfully submitted,

Dan Rodney Joos
Petitioner *Pro Se*

IN THE SUPREME COURT OF THE STATE OF UTAH

---oo0oo---

Piper Joos,

Plaintiff and Respondent,

v.

No. 970586
960720 CA
954904707 DA

Dan Rodney Joos,

Defendant and Petitioner.

----ooOoo---

ORDER

Petitioner's motion to request hearing is denied.

The petition for extraordinary relief is denied.

FOR THE COURT:

1/14/98
Date

/s/
Michael D. Zimmerman
Chief Justice

IN THE UTAH COURT OF APPEALS

ORDER

Before Judges Davis, Wilkins, and Jackson.

This matter is before the court on appellant's motion for reconsideration.

IT IS HEREBY ORDERED that the motion is denied.

Dated this 6th day of August, 1997.

/s/

James Z. Davis, Presiding Judge

IN THE UTAH COURT OF APPEALS

ORDER

Before Judges Davis, Wilkins, and Jackson.

This matter is before the court pursuant to defendant's "Petition for Extraordinary Relief," in which he asks this court to immediately order "family counseling . . . vacat[e] the decree of divorce and reunit[e] our family during the pendency of the appeal." Plaintiff did not directly respond to the petition, but did file a responsive brief on the issues raised by defendant on appeal.

Based on the record before us, it does not appear that defendant is likely to succeed on the merits of his appeal.

Therefore, IT IS HEREBY ORDERED that the petition is denied. IT IS FURTHER ORDERED that defendant shall file his reply brief, if any, on or before July 14, 1997.

Dated this 24th day of June, 1997.

/s/
James E. Davis, Presiding Judge

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ORDER DENYING DEFENDANT'S OBJECTION
TO COMMISSIONER'S RECOMMENDATION

Defendant's Objection to the recommendations and Order of the Domestic Relations Commissioner, Lisa Jones, came before the Court, pursuant to the Defendant's Notice to Submit for Decision and the provisions of Rule 4-501(3), Utah Code of Judicial Administration. The Court, having reviewed the pleadings filed and discussed the objection with counsel at a prior hearing, being fully advised in the premises, by written Minute Entry dated August 26, 1996, determined that Defendant's Objection to the Commissioner's Recommendation should be denied. Now, therefore,

IT IS HEREBY ORDERED AND ADJUDGED that the Defendant's Objection to the Domestic Relations Commissioner's Recommendation and Order be and the same is hereby denied.

DATED this 9 day of September, 1996.

BY THE COURT:

/s/
SANDRA N. PEULER
DISTRICT JUDGE

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ORDER DENYING PETITION
FOR CONCILIATION

The Petition of Defendant for Conciliation was heard at a regular term of the above entitled Court, in connection with the Pre-trial Settlement Conference, pursuant to notice, May 1, 1996 by Domestic Relations Commissioner, Lisa Jones. The matter was argued and presented to the Domestic Relations Commissioner for recommendation and ruling. The Commissioner, having reviewed the Petition, the Sections of the Utah Code, determined that the Petition should be denied. Now, therefore,

IT IS HEREBY ORDERED AND ADJUDGED that the Petition of Defendant for conciliation be and the same is hereby denied.

DATED this ____ day of May, 1996.

BY THE COURT:

_____
SANDRA N. PEULER
DISTRICT JUDGE

APPROVED AS TO FORM:

_____
LISA A. JONES
DOMESTIC RELATIONS COMMISSIONER

IN THE SUPREME COURT OF THE STATE OF UTAH

REQUEST FOR HEARING ON PETITION FOR EXTRAORDINARY WRIT TO SUSPEND DECREE, REUNITE AND COUNSEL FAMILY
Of Petitioner

Petitioner Dan Rodney Joos requests oral argument regarding the petition for extraordinary writ now before this Court. Rule 19(c) of Utah Rules of Appellate Procedure says:

> "Unless the appellate court determines that the petition is frivolous on its face, the clerk shall advise the parties of the date of oral argument."

There does not appear to be any provision in Rule 19 to deny oral arguments, but the deputy clerk of the Supreme Court has advised us that there will be none (see attachment)

The purpose of hearings is to fully advise the Court of the facts to prevent injustice and error. If this Court relies on the responses that have been submitted regarding this petition then assuredly there will be a miscarriage of justice.

Mr. Fankhauser responds to this petition (Dec. 19, 1997)

> "3. The recommendation of the Guardian Ad Litem was not acted upon by the Petitioner in the District Court."

The true fact shown in an attachment to the petition shows that I told the District Court:

II
GUARDIAN AD LITEM RECOMMENDED COUNSELING

4. Guardian ad litem recommended counseling. The report of the Guardian ad litem filed herein recommends that both parties

participate in counseling. This petition is in part filed in furtherance of said recommendations. Defendant desires to reconcile and believes that appropriate counseling may assist the parties to resolve their differences and may save the marriage.

This is the beginning of my dedicated, fixed determination for "The Recommendation of the Guardian Ad Litem" that continues to this day.

Mr. Fankhauser then says:

> "The GAL recommended counseling to improve the relationship of the Petitioner with his children due to his past acts. The harsh discipline in her opinion did not amount to abuse and the children were not at risk."

The true fact shown in the report (attached to petition) shows this is completely false and the Guardian Ad Litem said nothing of the sort.

Representing the District Judge, Mr. Johnson responds (Dec. 19, 1997) that this petition is trying to "circumvent traditional trial and appellate procedures.

The reality of this situation is that this makes the third Christmas that I have been unable to take our children to family gatherings or enjoy their company for the holidays because the decree forbids it. The decree has reduced our relationship to little more than walking through the neighborhood. In effect, for two years, the District Court has said, "Give the children the father's money and property, but the father is unneeded."

Mr. Johnson seems to feel our children are in cold storage all these years during litigation regardless of what the Guardian Ad Litem said. The Guardian Ad Litem made three recommendation/ evaluations after saying the allegations were false and the decree makes all three worse. This person was appointed to uphold the

children's interests, only to be completely ignored. The decree specifically limits the right of our children to be involved with their father contrary to many statutes.

It is appropriate that this petition should be granted to reverse this injustice. Again I request oral argument to properly present the matter before the Court.

Dated the 2nd day of January, 1998.

/s/
Dan Rodney Joos,
Petitioner, Pro Se

IN THE SUPREME COURT OF THE STATE OF UTAH

PETITION FOR EXTRAORDINARY WRIT TO SUSPEND DECREE, REUNITE AND COUNSEL FAMILY

Of Petitioner

Dan Rodney Joos petitions the Utah Supreme Court for an extraordinary writ to the Honorable Sandra N. Peuler of the Third Judicial District Court as described in Rule 19 of Utah Rules of Appellate Procedure. I ask that this writ direct the Court to suspend its orders and decree and to reunite and counsel our family as provided by law and as recommended by the court-appointed guardian ad litem during the pendency of the appeal.

My wife and I, named above, are parties with our three children in this marriage, but when the guardian ad litem (see attachment) told the District Court that the allegations were not true that others had told my wife and recommended "That the parties enter family counseling with their children, **at the earliest possible time,**" the District Court would not allow it. This writ is the only possible and speedy remedy for our family to receive this counseling of which our children have been too long denied. The District Court gives no reason or explanation at all for failing to follow the guardian ad litem's recommendation.

The District Court also refused many requests and petitions for either formal or informal conciliation proceedings as provided by law (see attachments).

It is impractical and inappropriate to petition the District Court during appeal for relief that it has repeatedly denied. When I

complained to the Trial Court's Clerk of our family's treatment, she said, "Well you have to understand that half of the divorces here have one spouse not wanting divorce." In spite of the Public Policy Declaration by the legislature (Utah Code-30-3-11.1) the judiciary never gave the District Courts any **procedures** to follow for the half of the marriages that could be saved. This is an open invitation to abuse and manipulation!

Not only does the District Court fail to follow public policy and mandatory law (Utah Code 30-3-12, etc.), but as counsel points out by the brief of the Appellee (pages 5,7), the District Court proceeded and skipped step two of the law laid down by the legislature and did what the law absolutely forbids.

I was holding out and insisting on step one to try saving the marriage according to law, but the District Court skipped it **and** step two (Utah Code 30-3-11.3). This step is to "educate and sensitize divorcing parties to their children's needs both during and after the divorce process." Subparagraph (3) says:

> "**As a prerequisite to receiving a divorce decree,** both parties are required to attend a mandatory course of their children's needs after filing a complaint for divorce and receiving a docket number, unless waived under Section 30-3-4. If that requirement is waived, the court may permit the divorce action to proceed."
>
> (Emphasis added).

I have not attended and the District Court

did not waive the requirement. Utah Code 30-3-4(1)(c) says:

> "If the petitioner and the respondent have a child or children, **a decree of <u>divorce may not be granted</u> until both parties have attended the mandatory course described in Section 30-3-11.3,** and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties." (Emphasis added).

For the Court of Appeals to uphold the decree is to defraud the people of Utah of their right to govern through elected representatives. The District Court usurps the rights of the people when it refuses to obey the law and then does what the law prohibits. The courts don't allow police or the people to do that.

Even more destructive and detrimental to the children is the gross interference of the decree in impairing my ability to maintain meaningful relationships with our children. *In re J. P. 648 P.2d 1364* (see attachment) the Utah Supreme Court explains in detail this constitutional right and the risk of leaving children in "emotional limbo". The guardian ad litem mentioned in particular the need of the children to improve our relationship and this should no longer be delayed by the decree

during the appeal.

I implore the Utah Supreme Court to open the way for me to rear and care for our children and for family counseling by granting this writ to suspend the District Court's orders and decree and reuniting our family during this appeal. This will allow the Supreme Court the time to fully consider **procedures** to safeguard the rights of couples and children without punishing our children further during the wait. With such wide ranging circumstances of families, the District Courts need an orderly, regulated process that amounts to more than lumping everyone together and saying, "Welcome to court, either get a divorce or get out!"

Dated the 12th day of December, 1997.

/s/

Dan Rodney Joos,
Petitioner, Pro Se

(IN RE J.P. UTAH 648 P.2d 1364,1372)

III. THE CONSTITUTIONAL RIGHT OF PARENTS

[4-6] This Court has recently declared that "the ideals of individual liberty which... protect the sanctity of one's home and family" are "essential in a free society..." *In re Castilo*, Utah, 632 P.2d 855, 856 (1981). A parent has a "fundamental right, protected by the Constitution, to sustain his relationship with his child." *State in re Walter B.*, Utah, 577 P.2d 119, 124 (1978) (plurality opinion). It is fundamental to our jurisprudence that "the custody, care and nurture of the child reside first in the parents," *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944), and that the parents' right "to direct the upbringing and education of children under their control," *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35, 45 S.Ct. 571, 573-74, 69 L.Ed. 1070 (1925), is protected by the Constitution. In *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923), the Supreme Court included family relationships in the "liberty" of which a state cannot deprive any person without due process of law under the Fourteenth Amendment to the United States Constitution:

> While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual ... to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, . and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

As it noted in a recent opinion, the United States Supreme Court has now "recognized on numerous occasions that the relationship between parent and child is constitutionally protected."

Quilloin v. Walcott, 434 U.S. 246, 255, 98 S.Ct. 549, 554, 54 L.Ed.2d 511 (1978). For example, in *Santosky v. Kramer*, – U.S. –, 102 S.Ct. 1388, 1394, 71 L.Ed.2d 599 (1982), the majority refers to the "fundamental liberty interest of natural parents in the care, custody, and management of their child The Court was unanimous on this point. The four justices who dissented emphasized that they did not disagree "with the majority's conclusion that the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." *Id.* 102 S.Ct. at 1405.

We deal here with a fundamental principle. The Constitution of Utah declares, Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government." Article I, § 27. The cornerstone of democratic government is the conviction that governments exist at the sufferance of the people, in whom "[a]ll political power is inherent Utah Const. Art. I, § 2. A residuum of liberty reposes in the people. That liberty is not limited to the exercise of rights specifically enumerated in either the United States or the Utah Constitutions. Thus, Article I, ° 25 of the Utah Constitution states, "This enumeration of rights shall not be construed to impair or deny others retained by the people." The Ninth Amendment to the United States Constitution states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." *See generally Griswold v. Connecticut*, 381 U.S. 479, 486-99, 85 S.Ct.. 1678, 1682-90, 14 L.Ed.2d 510 (1965) (Goldberg, J., concurring); L. Tribe, *American Constitutional Law*, §11-3 (1978).

[7] The rights inherent in family relationships – husband-wife, parent-child, and sibling – are the most obvious examples of rights retained by the people. They are "natural," "intrinsic," or "prior" in the sense that our Constitutions presuppose them, as they presuppose the right to own and dispose of property. Decisions of the United States Supreme Court have declared that "[t]he freedom to marry has long been recognized as one of the vital

personal rights essential to the orderly pursuit of happiness by free men." *Loving v. Virginia*, 388 U.S. 1, 12, 87 S.Ct. 1817, 1823-24, 18 L.Ed.2d 1010 (1967). *See also Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673, 54 LEd.2d 618 (1978). Similarly, the Court has characterized the right to procreate as among the "basic civil rights of man." *Skinner v. Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942). Blackstone deemed "the most universal relation in nature ... [to be] that between parent and child." 1 W. Blackstone, *Commentaries** 446.

The integrity of the family and the parents' inherent right and authority to rear their own children have been recognized as fundamental axioms of Anglo-American culture, pre-supposed by all our social, political, and legal institutions. "To protect the [individual] in his constitutionally guaranteed right to form and preserve the family is one of the basic principles for which organized government is established . . . *Lacher v. Venus*, 177 Wis. 558, 569, 188 N.W. 613, 617, 24 A.L.R. 403, 409 (1922). "The family is the basis of our society." *In re Guardianship of Faust*, 239 Miss. 299, 807, 123 So.2d 218,231(1960). "The family entity is the core element upon which modern civilization is founded." *In re Luscier*, 84 Wash.2d 135, 136, 524 P.2d 906, 907 (1974). *Accord Matarese v. Matarese*, 47 R.I. 131, 132-33, 131 A. 198, 199, 42 A.LR 1360, 1361 (1925); *Gilmore v. Kitson*, 165 Ind, 402, 410, 74 N.E. 1083, 1085 (1905). "This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205,232,92 S.Ct. 1526, 1541,32 L.Ed.2d 15 (1972).

This parental right transcends all property and economic rights. It is rooted not in state or federal statutory or constitutional law, to which it is logically and chronologically prior, but in nature and human instinct. Thus, the United States Supreme Court has declared that "the liberty interest in family privacy has its source ... in intrinsic human rights.... *Smith v. Organization of Foster Families*, 431 U.S. 816, 845, 97 S.Ct. 2094, 2110, 53 L.Ed.2d 14 (1977). The New York Court of Appeals applied that concept in

unanimously rejecting the state's attempts to deprive a mother of the custody of her children on the basis of her engaging in conduct that was politically and socially unpopular.

> No court can, for any but the gravest of reasons, transfer a child from its natural parent to any other person, [authorities cited], since *the right of a parent, under natural law, to establish a home and bring up children is a fundamental one and beyond the reach of any court*. [Emphasis added.]

People ex rel. Portnoy v. Strasser, 303 N.Y. 539, 542, 104 N.E.2d 895, 896 (1952). Similarly, this Court has stated that the parent's right, as well as duty, to care for a child "may be termed natural, as well as legal and moral." *Mill v. Brown*, 31 Utah 473, 483, 88 P. 609, 613 (1907). More recently, this Court has spoken of "the natural right and authority of the parent to the child's custody," *State in re Jennings*, 20 Utah 2d 50, 52, 432 P.2d 879, 880 (1967), and of "the prior and fundamental right of a parent to rear his child ...." *In re Castillo*, 632 P.2d at 856.

In *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972), the United States Supreme Court summarized the legal effect of these conclusions that the rights embodied in family relationships are inherent, natural, and retained rights as follows: "The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment." (Emphasis added; citations omitted.)

IN THE UTAH COURT OF APPEALS

REQUEST FOR RECONSIDERATION
of Defendant and Appellant

Defendant and appellant, Dan Rodney Joos, requests the Court of Appeals to reconsider my petition to extraordinary relief (included herein, filed May 21, 1997), and the Court's order (included herein, filed June 24, 1997). To deny our family the "family counseling powers" mandated by the legislature is to deny due process of law. The legislature expects the courts to make efforts to preserve **every** marriage, even those with grounds for divorce. The legislature makes no "exceptions, escape hatches or limitations" for the judge to ignore this law even if he believes the plaintiff will prevail.

Pursuant to the Court of Appeals order, my reply brief will be filed by July 14, 1997. Although irrelevant to our rights of due process of law to receive family counseling, I respond to this Court's doubts on the merits of my appeal.

The District Court's decree and judgment cannot survive, it is not possible!

The judgment cannot survive the "strict scrutiny standard" that must apply with the denial of fundamental constitutional rights.

The first issue of my brief asks the Court to provide the opportunity to try and save the marriage as provided by law. To fail to do so is denial of due process and equal protection. The District Court made a restraining order to keep me from seeing my wife because people told her to ask for it, and has treated us as adversaries since the beginning. A lifetime restraining order is unlawful based simply on someone asking for it and makes reconciliation a tremendous and unlikely undertaking. Doing **nothing** to save a marriage is not a choice the legislature allowed.

The second issue of my brief is a question of law that must be decided in my favor. The legislature gave no explanation or guidance when "irreconcilable differences" was added to the grounds of divorce. This means that the "plain language"rule applies. "irreconcilable differences" means **differences** that are **impossible** to **reconcile**. The attorney for the plaintiff argues points in his brief that are irrelevant or purposely excluded in the Trial Court's ruling and

simply does not show any differences at all, much less any evidence as to whether they can be reconciled. "Disagreement" does not mean "Differences". For example: A husband can say he and his wife cannot agree on raising children. This shows "disagreement". Or he could say, "I think a young child should go to bed at 7:00 and my wife thinks they should go to bed at 9:00". This shows a "difference". Then he must show, and the court must find, that the difference is "impossible to reconcile by any means". The trial judge has the power of law granted by the legislature to order an 8:00 bedtime, or any time, to prevent harm to the children caused by divorce and to reconcile such a trivial issue and the marital relationship.

The last issue about constitutionality is properly before the Court of Appeals because it is in the pleadings and both briefs quote the authority in the record to argue the issue. Because the judgment deprives me of my property and the ability to maintain relationships with my children (fundamental rights) and it meet all the criteria for "plain error", it would be properly before this Court anyway. This issue simply allows this Court to blame the law, instead of the judge, for what the entire judiciary is doing.

The judgment, (which the Court of Appeals has) shows the martial home valued at $95,000.00 with no mortgage (R. 244). The record shows the contents are insured for over $40,000.00 (R. 490, 491). Of that total, the judgment gives me (R. 269) $1,465.00 which includes a wood stove at $500.00 (we paid $150.00) and a hand sander valued at $400.00 (we paid $25.00).

Now someone should explain to my eight year old son how it is fair, after 18 years of marriage, for his dad to get a belt sander and a wood stove to raise him to the age of an adult. But the Trial Court didn't stop there. The Trial Court then said because the Court was depriving me of our property, our sons cannot go with me or stay with me until I re-acquire what the judge deprived me of. My right to this property is fundamental. Did the judiciary protect my right to oppose the dissolutionment of the marriage **and** my rights guaranteed under the Constitution?

But now, here is the real interesting part. The trial judge had no authority to deprive me of our property - only the power to give orders to make sure that I got my fair share. Our property is ours alone to deal with - it is not the States and it is not our children's.

Isn't it astounding that page after page, paragraph after paragraph of statutory law about preserving marriage is completely ignored by the trial court and then the trial court altogether exceeds its authority because of a single sentence that includes the word "property" in Utah Code 30-3-5(1). (The word "equitable" **does not mean** the Trial Court can deprive me of our property at all, for any reason.)

Strict scrutiny of the State's police powers to regulate marriage shows fatal flaws in this judgment - it cannot stand. For example: the law allows police to get a search warrant, but forbids any act that steps on fundamental rights except within the **narrow** confines of the warrant. Police are not free to get a warrant and then do anything they want. In the same manner, constitutional law allows the State the police powers to regulate marriage in the public interest, but **only** to the extent of that interest.

The reason my wife and I came to the courthouse was because Utah is interested in preserving marriage. The State has no special interest in how we spend our money, divide our property or the custody of the children. Those are fundamental rights in which the State has no compelling interest. After all, two single people can live together without marriage and have children and live lives like married people - and then split up and make all those decisions without the State stepping in. Constitutional law demands the State show compelling interest to classify and treat us any different. Utah law cannot deprive us of constitutional rights that are accorded to other persons.

Finally, the State must prove that "irreconcilable differences" clearly tells me what behavior I must avoid to interfere with my constitutional rights. As the State heaps burdens on our "class" that are oppressive in nature and arbitrary, the statute will fail when we must guess at it's meaning.

With all this in mind, I ask the Court of Appeals to reconsider it's order and to vacate the decree of divorce, reunite our family and provide for family counseling during the pendency of the appeal.

Dated July 3, 1997.

/s/
Dan Rodney Joos,
Petitioner, Pro Se

IN THE UTAH COURT OF APPEALS

PETITION FOR EXTRAORDINARY RELIEF
of Defendant and Appellant

Pursuant to Rule 65B(d)(2)(B) of Utah Rules of Civil Procedure, Dan Rodney Joos (defendant and appellant) petitions the Court of Appeals for a speedy review and decision as to whether the Third Judicial District Court failed to perform acts required by law in our case. If the District Court has failed to perform such acts, I ask that appropriate orders be made that these acts can immediately commence before further damage happens to our family or each member. Such extraordinary relief requested should not interfere with the regular appellate review of our case, but is meant for relief during the pendency of the appeal, to help preserve this family, until the final determination of this case by this Court.

Utah Code 30-3-12 says:

> "Each District Court of the respective judicial districts, while sitting in the matters of divorce....**shall** exercise the family counseling powers conferred by this act." (Emphasis added)

On May 1, 1997, the Utah Court of Appeals filed a couple of opinions that went to much length to explain that "shall" means "Mandatory." Most notable is *A. E. v. Christean 316 Utah Adv. Rep. 3.* Page 5 says *:*

> "(Stating terms of statute 'Should be given an interpretation and application which is in accord with their usually accepted meanings' in holding term "shall" mandatory)."
>
> and further (same Page)
>
> "The term 'shall' is usually presumed mandatory

and has been interpreted as such previously in this and other jurisdictions."

From filing of the complaint, I have said and done everything possible to convince the District Court to intervene and use these family counseling powers to preserve this marriage and family - to no avail. Among the District Court's options were those found in Utah Code 30-3-17 where the legislature directs:

> "The judge of a district court may counsel either spouse or both and may in his discretion require one or both of them to appear before him and, in those counties where a domestic relations counselor has been appointed pursuant to this act, require them to file a petition for conciliation and to appear before such counselor, or may recommend the aid of a physician, psychiatrist, psychologist, social service worker or other specialists or scientific expert, or the pastor, bishop, or presiding officer of any religious denomination to which the parties may belong. The power and jurisdiction granted by this act shall be in addition to that presently exercised by the district courts and shall not be in limitation thereof."

To try and receive the counseling mandated by the legislature, a petition for conciliation (Utah Code 30-3-16.1 - 30-3-16.7) was filed that both the commissioner and district judge refused to consider, declaring the law invalid. In that petition I asked specifically that our long-time family physician direct such counseling, reflecting the direction of Chief Justice Wolfe of the Utah Supreme Court, who said (*Morrison v. Frederico, 232 P.2d 374, 379*):

> "Many divorces might be prevented if causes of friction were diagnosed in time to prevent them from destroying the relationship....But in matters of domestic relations, the means and instrumentalities used in the process of reconciliation may be as important as the concept of reconciliation itself.
>
> "...I venture to say that the old type of family doctor who went into the home knew more about the family life of his patients and their emotional problems and was more often consulted regarding them than the lawyer will ever be and perhaps as much as the minister and pastor."

This counseling needs to happen now. This family has immediate needs. The separation of family members, prolonged by the courts, only aggravates the situation and endangers the prospect of reconciliation.. The guardian ad litem directed:

> " I recommend, therefore, that the parties enter into family counseling with their children, **at the earliest possible time**, either through the family support centers (487-7778, 255-6881) or Valley Mental Health (967-4405, 264-2315)." Emphasis added.

During the pendency of Appeal, the decree of divorce should be vacated and the family reunited to return us to a proper state, existing before trial, that allows family counseling and reconciliation to fulfill the legislative declaration as follows:

> 30-3-11.1. Family Court Act.
> "It is the public policy of the State of Utah to strengthen the family life foundation of our

> society and reduce the social and economic costs to the state resulting from broken homes and to take reasonable measures to preserve marriages, particularly where minor children are involved. The purposes of this act are to protect the rights of children and to promote the public welfare by preserving and protecting family life and the institution of matrimony by providing the courts with further assistance for family counseling, the reconciliation of spouses and the amicable settlement of domestic and family controversies."

Utah Code 30-3-12 is also a law, in the same category, described by Judge Orme of the Utah Court of Appeals (*A. E. v. Chistean 316 Utah Adv. Rep. 3,7 [May 1, 1997]):*

> "But the law before us today is not a judicially developed rule or doctrine. On the contrary, it is a law, mandatory in nature, which has been enacted by the Legislature. Where laws passed by the Legislature are concerned, we simply do not enjoy the kind of flexibility we have with rules and doctrines that rely more on judicial interpretation than legislative enactment for their existence. If exceptions, escape hatches, or limitations to the mandates of section 78-3a-312 are desirable or necessary, it is for the Legislature to make them."

It is well to remember that the Family Court Act was put into place to discover and solve problems that can save families. Every family has different challenges. Our family is trying to cope with the tremendous burden of recently having a baby that was born dead. The magnitude of such an event cannot be understood by the inexperienced.

The volume of "Death and Dying" of the Encyclopedia of Health, page 64 says:

> "Marriages sometimes founder after a child's death. Tensions that already that already divide parents usually sharpen under the added pressure of grief, **the possibility of divorce escalates drastically;** indeed its likelihood becomes **four or five times greater,** according to John Bowlby, author of *"Loss"*, a study of death and its consequences published in 1973. Instead of mourning together, couples may project their anger or guilt onto one another." (Emphasis added)

Who can understand the devastation parents feel to hold a dead baby just born with the umbilical cord wrapped tightly around it's neck? Who can imagine the sorrow of holding this infant while hearing the cries of newborn babies across the hall? To enter the hospital pregnant and walk out of it, to the car, empty handed?

Here are the mathematics to understand the overwhelming struggle. The Salt Lake Tribune reported on April 25, 1997 (page E-1):

> "1992 figures from the journal *"Sociological Perspectives"* — the most recent comprehensive data — show that 60 percent of first marriages end in divorce...."

If we multiply 1000 marriages by the divorce rate of .4 (surviving marriages) five times, for families who experience a child's death, we will see how few marriages survive.

1000 x .4 = 400 x .4 =160 x .4 = 64 x .4 = 26 x .4 = 10.

If only ten marriages out of 1000 survive after a child's

death, it should be no surprise that the remaining 10 marriages struggle against incredible odds and sorrow. (a 99% divorce rate). *Death and Dying* states further (pages 63, 64):

> "**Grief of Parents** - The death of a much loved infant, child or adolescent is probably the most devastating loss of all....Parents are gripped by guilt, anger and helplessness. Because they cannot point to any clear cause of death, they may blame one another."

I am certain that had the district court judge read Chapter 11, "Stress on the Marriage," of the book "**When Goodbye is Forever: Learning to Live Again After the Loss of a Child,**" that a decree of divorce would never have happened in our case. While it isn't the district court judge's responsibility to know all these things, the Legislature made it the judge's responsibility to "exercise the family counseling powers" so our family could receive the needed help.

> On page 81 of *Loss and How to Cope With it,* it says: "Parents who lose a child sometimes fall into deep trouble as well, like the outsiders, they may try to protect their remaining children beyond what is reasonable."

This coincides perfectly to what the guardian ad litem reported:

> "However, I am concerned that the children may be over protected by their mother."

No wonder the guardian ad litem also recommended family counseling.

I, therefore, ask again for emergency relief to provide immediately the legislative mandated family counseling of Utah

Code 30-3-12 by vacating the decree of divorce and reuniting our family during the pendency of the appeal.

Dated the 21st day of May, 1997.

/s/
Dan Rodney Joos,
Petitioner, Pro Se

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, UTAH

DEFENDANT'S OBJECTION TO & APPEAL FROM
COMMISSIONER JONES ORDER DENYING
PETITION FOR CONCILIATION & REQUEST
FOR REVIEW & FOR **ORAL ARGUMENT**

I OBJECTION TO ORDER, APPEAL FROM ORDER & REQUEST FOR REVIEW OF DECISION BY THE DISTRICT COURT

Defendant objects to and/or appeals to the District Court from the Order and/or Proposed Order by Commissioner Lisa Jones denying defendant's petition for conciliation. In support of this objection, appeal and/or request defendant alleges as follows:

1. **Petition for conciliation.** That about April 15, 1996 defendant filed a petition for conciliation herein pursuant to the provisions of (Utah Code § 30-3-16.2, et seq.) and, among other things, asked that divorce proceedings be stayed for 60 days and that the matter be referred to an appropriate person for counseling as provided by statute. The content of said petition is incorporated herein by reference.

2. **Plaintiff's objection.** Plaintiff objected in her 4/29/96 "Objection to Petition for Conciliation and Motion to Dismiss," wherein she argued that the conciliation statute should not be enforced.

3. **Defendant's reply.** Defendant responded with a 5/1/96 memorandum which further outlined applicable statutes and urged the Commissioner to enforce mediation. The content of said memorandum is incorporated herein by reference.

4. **Commissioner refused to enforce mediation.** The Commissioner refused to enforce mediation and, in effect, determined that the mediation statute was not enforceable. This objection, appeal and/or request for review are taken from that decision and the resulting order denying mediation. Defendant believes that the Commissioner is in error and asks the Court to review and reverse her decision and to order mediation.

5. **Request for review by Court & for oral argument.** Defendant requests that the Court review the decision and/or order by

Commissioner Jones which denied conciliation. Defendant requests oral argument.

II. CONCLUSION

The Court should reverse the decision of the Commission, vacate her order, stay the pre-trial hearing and other proceedings, should require the parties to participate in counseling and conciliation efforts with a person designated by the Court. The request for mediation counseling is particularly appropriate since the guardian *ad litem* also recommended counseling.

Dated May 8, 1996.

/s/
Ronald C. Barker
Attorney for Defendant

THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, UTAH

DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTION TO PETITION FOR CONCILIATION & MOTION TO DISMISS

Defendant responds to plaintiff's 4/29/96 "Objection to Petition for Conciliation and Motion to Dismiss" as follows:

I RESPONSE TO PLAINTIFF'S OBJECTION TO PETITION FOR CONCILIATION

1. **Repeal of 30-3-11.** Counsel for plaintiff correctly points out that in 1961 UC 30-3-11 was repealed, which declared it public policy to foster marital and family relationships. However, in 1969 UC 30-3-11.1 was enacted which declared the public policy to be:

> It is the **public policy** of the state of Utah to **strengthen the family** life foundation of our society and reduce the social and economic costs to the state resulting from broken homes and to **take reasonable measures to preserve marriages, particularly where minor children are involved.** The purposes of this act are to protect the rights of children and to promote the the public welfare by preserving and protecting family life and the institution of matrimony by **providing the court with further assistance for family counseling, the reconciliation of spouses and the amicable settlement of domestic and family controversies.** (Emphasis added).

> The 1969 statute also added UC 30-3-11.2 [appointment of counsel for child], 30-3-11.3 [mandatory educational course for divorcing parents].

2. **Repeal of 30-3-13.** Counsel for plaintiff also correctly points out that in 1961 UC 30-3-13 relating to domestic relations

counselors was repealed. Plaintiff argues that there because domestic relations counselors in used prior to 1961 no longer function, that there is allegedly no-one available to counsel the parties for conciliation. Defendant disagrees. In 1969 UC 30-3-13.1 was enacted which allows a county to establish a family court division of the district court, and 30-3-12 was enacted which directs the district court to:

> **"Each district court . . . shall exercise the family counseling powers conferred by this act."** (Emphasis added).

Pursuant to 30-3-17, defendant has asked the Court[1] to require both parties to appear before the Gene R. Fuller, M.D., the family's physician, who is one of the persons described therein as an appropriate person to conduct counseling functions, or some other suitable person, to conduct or direct counseling through such experts as he deems to be appropriate.

3. **Petition for conciliation is timely.** Counsel for plaintiff incorrectly argues that under UC 30-3-16.2 a petition for conciliation can only be filed prior to a divorce action. Defendant disagrees. UC 30-3-16.7 provides in part that:

> **The pendency of an action for divorce**, annulment of marriage or separate maintenance **shall not prevent either party to the action from filing a petition for conciliation under the act,** either on his own or at the request and direction of the court as authorized by Section 30-3-17; and the **filing of a petition for conciliation shall stay for a period of 60 days, unless the court otherwise orders, any trial or default hearing upon the complaint.** (Emphasis added).

3. **Legal fees.** Plaintiff's request for attorney fees is based upon the premise that defendant's petition for conciliation is untimely

---

[1] See ¶ 1 of Petition for Conciliation.

or premature.[2] Defendant's Petition for Conciliation is neither untimely or premature. Plaintiff's request for attorney fees should be denied.

II
CONCLUSION

The Court should stay the pre-trial hearing and other proceedings, should require the parties to participate in counseling and conciliation efforts with a person designated by the Court, and should deny plaintiff's request for attorney fees. The request for counseling is particularly appropriate since the guardian *ad litem* also recommended counseling.

Dated May 1, 1996.

/s/
Ronald C. Barker
Attorney for Defendant

---

[2] See ¶ 5 of Plaintiff's objection. Defendant is unable to determine the bases of plaintiff's argument that the petition for conciliation is "premature", since plaintiff's objection does not appear include facts or argument supporting that claim.

THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, UTAH

(DEFENDANT) PETITION FOR CONCILIATION
(Utah Code § 30-3-16.2, et seq.)

I
PETITION FOR CONCILIATION

For the purpose of preserving the marriage by effecting a reconciliation between the parties, pursuant to the provisions of 30-3-16, et seq., the defendant Dan Rodney Joos ("**DAN**") moves the Court for an appropriate orders within the contemplation of UC 30-3-16.1, et seq, including but not limited to the following:

1. **Directing counseling.** Ordering and directing both parties to appear before a person such as those described in UC 30-3-17 for counseling. Defendant recommends that the Court designate Gene R. Fuller, M. D., 3920 South 11th East, Suite 220, Salt Lake City, Utah 84124 and/or his associates, who is a long-time family physician, in which both parties repose much trust and confidence, as the person to conduct and/or to direct said counseling through such experts as he deems to be appropriate.

2. **Vacating pre-trial conference.** For an order vacating the pre-trial conference now scheduled for May 1, 1996, to accommodate said counseling.

3. **Content of petition.** - All of the information required by UC 30-3-16.3 to be included in the Petition is contained in the pleadings on file herein, the content of which are incorporated herein by reference thereto.

II
GUARDIAN AD LITEM RECOMMENDED COUNSELING

4. **Guardian *ad litem* recommended counseling.** The report of the Guardian *ad litem* filed herein recommends that both parties participate in counseling. This Petition is in part filed in furtherance of said recommendations. Defendant desires to reconcile and believes that appropriate counseling may assist the parties to resolve their differences and may save the marriage.

III
NOTICE THAT PROCEEDINGS ARE STAYED

5. **Proceedings are stayed.** Pursuant to the provisions of UC 30-3-16.7, notice is hereby given that by reason of filing of this petition, all further proceedings in this matter are stayed for a period of 60 days following entry of an order by the Court requiring Conciliation, or for such other time as the Court determines..

IV
NOTICE OF HEARING

6. **Hearing of this motion.** Subject to approval by the Court, notice is hereby given that the foregoing Petition for Conciliation will be called on for hearing before Commissioner Lisa Jones at 10:30 am., which was the time scheduled for the pre-trial hearing in this matter.

V
CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Petition for Conciliation, etc. to be served by United States mail, postage prepaid, upon the following person at the address indicated, the 15th day of April, 1996:

Ephriam Fankhauser, Esq.
243 East 4th South #200
Salt Lake City, Utah 84111

/s/
Ronald C. Barker
Attorney for Defendant